

PICKETING AND PICKETING RULES

INTRODUCTION

A picket in terms of section 69 of the Labour Relations Act 66 of 1995 (LRA) may only be authorised by a registered trade union and only members and supporters of that trade union may participate in the picket.

PURPOSE

A picket can only take place in support of a protected strike or in opposition to any lock-out. The purpose of the picket is to peacefully encourage non-striking employees and members of the public to oppose a lock-out or to support strikers involved in a protected strike. The nature of the support can vary. It may be to peacefully encourage employees not to work during the strike or lock-out. It may be to peacefully dissuade replacement labour from working. It may also be to persuade members of the public or other employers and their employees not to do business with the employer.

NO PICKETING WITHOUT RULES

No picket may take place without picketing rules. The parties may determine the picketing rules by means of –

- a collective agreement that is binding on the registered trade union or one or more registered trade unions; or
- a settlement agreement regulating picketing concluded at the conciliation hearing.

In the absence of such a collective agreement or settlement agreement, the commissioner conciliating the dispute must determine the picketing rules at the same time as issuing the Certificate of Outcome relating to the dispute (section 69(6A) of the LRA).

In terms of section 69(6B) the Commission may determine picketing rules on direct application from a registered trade union and on an urgent basis if-

- (a) It has referred a dispute about a unilateral change in terms and conditions of employment in accordance with section 64(4) and the employer has not complied with section 64(5); or
- (b) The employer has given notice of an intention to commence or has commenced an unprotected lock-out.

PICKETING RULES

The rules regulating picketing should consider the guidelines contained in the Code of Good Practice: Collective Bargaining, Industrial Action and Picketing and should consider the following matters-

- (a) The nature of the authorisation of the picket and its service upon the employer.
- (b) The notice of the commencement of the picket including the place, time and extent of the picket.
- (c) The nature of the conduct in the picket.
- (d) The number of picketers and their location.
- (e) The modes of communication between marshals and employers and other relevant parties

CONDUCT IN THE PICKET

Although a picket may be held in any place to which the public has access, the picket may not interfere with the constitutional rights of other persons. The picketers must conduct themselves in a peaceful, unarmed and lawful manner. They may, subject to specific rules to the contrary, carry placards, chant slogans, sing and dance.

Picketers may not forcefully prevent or intimidate suppliers, clients and customers of the employer, members of the public, employees who are not on strike and replacement labour from entering or leaving the employer's premises, commit any unlawful action, such as intimidating, coercing, threatening or assaulting any person or threatening to cause damage to any property whether belonging to the employer or not. Picketers may not incite violence, wear masks or have any dangerous weapons in their possession.

EMPLOYER CONDUCT

The employer or any person in authority at the workplace or acting on the employer's behalf, may not in any way-

- Hinder or obstruct the lawful and peaceful conduct of the picket.
- Undermine any employee's right to lawfully and peacefully participate in the picket or threaten to discipline any employee for peacefully or lawfully doing so.

- Engage in or permit conduct which is provocative or may incite conflict.
- Carry a dangerous weapon of any kind while in contact with the picketers.
- Use hate or defamatory speech or incite violence.

PICKETING ON EMPLOYER'S PREMISES OR IN OTHER DESIGNATED AREAS

A picket may take place on the employer's premises or other designated areas with the permission of the employer. The permission may not be unreasonably withheld. If picketing is to take place on the employer's premises or other designated areas, participants in a picket must remain within the designated picketing area(s), observe the health and safety regulations applicable to the workplace, refrain from causing any damage to property or allowing any damage to be caused, and leave the premises and facilities in the condition in which they found them.

DISTRIBUTION OF PICKETING RULES

Employers, employer organisations and trade unions must take measures to distribute the picketing rules to other affected parties. This may include placing the rules on notice boards and/or distributing copies of the rules to employees, management, and, where appropriate, private security officers.

RELEVANT LEGISLATION

- The Labour Relations Act 66 of 1995 (as amended, 2017).
- the Code of Good Practice: Collective Bargaining, Industrial Action and Picketing